NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

ANDRE GALE AND LATOYA GALE	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
JOHN DOE 1-7, ASHLEY PATTERSON, PROGRESSIVE INSURANCE COMPANY, ZURICH INSURANCE COMPANY, SMARTWATT ENERGY, CENTRICA BUSINESS SOLUTIONS HEADQUARTERS, AND CENTRICA BUSINESS SOLUTIONS	:	
	:	No. 2576 EDA 2025
APPEAL OF: PROGRESSIVE ADVANCED INSURANCE COMPANY	:	

Appeal from the Order Entered September 17, 2025
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): 230502590

BEFORE: BOWES, J., OLSON, J., and STEVENS, P.J.E.*

MEMORANDUM BY BOWES, J.: **FILED NOVEMBER 16, 2026**

Progressive Advanced Insurance Company ("Progressive") appeals from the trial court's finding in favor of Andre Gale ("Plaintiff") as to liability for breach of contract.[1] Since the court's ruling is not an appealable order, we quash this appeal.

The pertinent background is as follows. While driving a vehicle owned by his employer, Plaintiff was injured by an uninsured motorist. He sought

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* Former Justice specially assigned to the Superior Court.

[1] Plaintiff's wife, Latoya Gale, is also listed as a party plaintiff in this matter. However, because the parties do not address her claim and refer to Plaintiff as the sole appellant, we follow suit.

benefits from Progressive, his personal automobile insurer. Progressive denied his claim based on a policy exclusion for injuries sustained while using or occupying a vehicle that was available for his regular use but was not included in the list of automobiles covered by the policy.

Plaintiff sued Progressive and other now-dismissed defendants. Plaintiff's count against Progressive sounded in breach of contract for its failure to provide uninsured motorist benefits. Plaintiff sought an unspecified amount of damages from Progressive for "compensation damages, actual damages, incidental damages, outstanding medical costs, out of pocket expenses, lost wages, and lost future earnings, and fringe benefits, interests, and pre and post judgment interests, treble damages, [and] delay damages pursuant to Pa.R.C[iv].P. 238." Complaint, 5/24/23, at ¶ 39 (cleaned up).

Progressive moved for summary judgment based upon the policy's regular use exclusion. The trial court denied the motion on the basis that "[g]enuine issues of material fact exist as to both the availability characteristics of the vehicle in question as well as, and as bears upon[,] whether the vehicle in question was available for Plaintiff's regular use." Order, 4/23/25, at n.1.

The case was listed for trial to begin on June 9, 2025, with jury selection the week prior. Progressive filed a motion to bifurcate the liability and damages portions of the trial. The court did not rule on that request, presumably because "[t]he parties agreed to forgo the jury trial and submit

findings of facts and conclusions of law to the court." Trial Court Opinion, 1/20/26, at 1 (pagination supplied). Further, "[t]he parties had an agreement for the sum based upon the findings of the court on the issue of 'regular use.'" ***Id***. at 2. The court thus entered an order directing the filings of the proposed findings and conclusions and scheduling "oral arguments addressing said filings[.]"[2] Order, 6/5/25.

Both parties filed their proposals, attaching exhibits including the insurance policy and depositions. Of note, Plaintiff concluded his proposed findings with the following:

> As Plaintiff was not operating a vehicle that was available for his regular use. Plaintiff is not subject to [Progressive's] policy exclusion and as such. **Plaintiff is entitled to his benefits and whatever this Honorable court decides to award Plaintiff Andre Gale for his substantial injuries** requiring a hip replacement in February 2022 and a lower back surgery in January 2025, which has caused him to lose his job, being unemployed with a wife and [three] children and having to be on social security disability. As such, Plaintiff is entitled to judgment in his favor for his breach of contract claim in his complaint.

Plaintiff's Proposed Findings of Fact and Conclusions of Law, 8/1/25, at ¶ 59 (cleaned up, emphasis added).

The next docket entry following the parties' filings of proposed findings was a single-page "trial work sheet" form docketed as "Finding for Plaintiff." The document referenced a one-day non-jury date of June 5, 2025, included

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[2] According to Progressive, "oral argument was never held after being cancelled and rescheduled multiple times." Progressive's brief at 1 n.1.

an "X" in a box next to "Finding for Plaintiff (Non-Jury)," and stated the following disposition in full: "The court finds that the vehicle was not available for Plaintiff's regular use at the time of the accident. Plaintiff is not subject to [Progressive's] policy exclusion." Finding for Plaintiff, 9/17/25.

Progressive did not file post-trial motions. Nor did either party praecipe to enter judgment on the court's verdict. Instead, Progressive filed a notice of appeal.

This Court issued a rule to show cause why the appeal should not be quashed or dismissed due to Progressive's failure to file post-trial motions. Progressive responded by asserting that, regardless of the form the court used to issue its ruling, there was no trial in this case. ***See*** Response, 1/6/26, at 2 (pagination supplied). Instead, Progressive maintained: "The submissions of the parties were clearly presented akin to cross motions for summary judgment[.]" ***Id***. at 2. This Court discharged the rule and allowed the appeal to proceed, advising the parties that this merits panel may revisit the issue.

Upon review of the certified record, it is apparent to us that, whether the court's ruling was in the nature of a summary judgment order or a non-jury verdict, it was not an appealable order because Plaintiff's claim for damages remains unresolved.

This Court may raise the issue of the appealability of an order *sua sponte*, as it is a purely legal question that impacts our jurisdiction. ***See***, ***e.g.***,

Henry v. Colangelo, 348 A.3d 1181, 1184 (Pa.Super. 2025). Primarily, "the appellate jurisdiction of this Court extends to 'final orders of the courts of common pleas.'" ***Id***. (quoting 42 Pa.C.S. § 742). A final order is one that disposes of all claims as to all parties. ***See*** Pa.R.A.P. 341(b)(1).

In their respective briefs, Plaintiff and Progressive state different reasons why this appeal is properly before us. Starting with Plaintiff, he cites § 742 and Rule 341(b)(1) as the bases for this Court's jurisdiction, asserting that the trial court's September 17, 2025 Finding for Plaintiff was a final judgment. ***See*** Plaintiff's brief at 4-5. However, as detailed above, that ruling by the court resolved only Progressive's liability and not the damages due to Plaintiff. Despite the trial court's indication that the parties had agreed on a sum due, Plaintiff's proposed findings and conclusions referenced no stipulated damages. Instead, he asked the court to award an amount it deemed appropriate. ***See*** Plaintiff's Proposed Findings of Fact and Conclusions of Law, 8/1/25, at ¶ 59.

Yet, the court's finding was only that the exclusion did not apply to absolve Progressive of an obligation to cover Plaintiff's losses. It did not render a decision setting the amount of those losses. Nor did the parties *praecipe* to enter judgment reflecting an agreement as to the amount due in

light of the court's liability ruling.[3] Thus, as it stands, Plaintiff's breach of contract claim against Progressive is not fully and finally resolved. As such, § 742 and Rule 341 do not support the appealability of the court's September 17, 2025 ruling.

For its part, Progressive asserts Rule 341(b)(2) as the basis for this Court's jurisdiction. ***See*** Progressive's brief at 1. Rule 341(b)(2) was rescinded in 2015. The jettisoned provision allowed an appeal from an order defined as final by statute even if it did not dispose of the entire case. ***See***, ***e.g.***, ***Nationwide Mut. Ins. Co. v. Wickett***, 763 A.2d 813, 817 (Pa. 2000) ("Pursuant to Pa.R.A.P. 341(b)(2), an order is final if it is expressly so defined by a statute." (footnote omitted)). Such appeals now proceed under Rule 311(a)(8), which permits an appeal as of right from "[a]n order that is made final or appealable by statute or general rule, even though the order does not dispose of all claims and of all parties." Pa.R.A.P. 311(a)(8).

According to the Declaratory Judgment Act, 42 Pa.C.S. § 7532, interlocutory appeals involving the determination of an insurer's duties to its insureds may be appealable pursuant to Rule 311(a)(8). ***See***, ***e.g.***, ***Koch v. Progressive Direct Ins. Co.***, 280 A.3d 1060, 1065 (Pa.Super. 2022)

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[3] In other words, it appears that the trial court *de facto* granted Progressive's motion to bifurcate the trial, and only the first phase has been completed. We observe that post-trial motions need not be filed to preserve issues for appeal until all phases of a trial are complete. ***See Sampathkumar v. Chase Home Fin., LLC***, 241 A.3d 1122, 1134-36 (Pa.Super. 2020).

(holding order granting motion for summary judgment and declaring the amount of coverage available to the insured was immediately appealable).

However, when the claim seeks both a declaration of coverage and an award of damages, an order only resolving the coverage issue is not immediately appealable. ***See Schmitt v. State Farm Mut. Auto. Ins. Co.***, 245 A.3d 678, 686 (Pa.Super. 2021) (quashing appeal from order resolving issue of coverage but not damages where the complaint sought both). Since, as in ***Schmitt***, Plaintiff has an unresolved claim for damages in addition to the request for a ruling as to the applicability of the policy exclusion, the instant appeal is not from a declaratory judgment immediately appealable pursuant to Rule 311(a)(8).

For the above reasons, we conclude that Progressive has appealed from an unappealable, interlocutory order. Consequently, we lack jurisdiction to entertain its merits and must quash.

Appeal quashed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/16/2026